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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,937	12/17/2003	Joseph A. Welzen		9673

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BRANDE AND MCCLEARY
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EXAMINER

RAMIREZ, RAMON O

ART UNIT PAPER NUMBER

3632

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/738,937

Applicant(s)

WELZEN, JOSEPH A.

Examiner

RAMON O. RAMIREZ

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 18-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 18-21 and 28-30 is/are rejected.
- 7) ☒ Claim(s) 22-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/2/05.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Detailed Action

This is the second Office Action corresponding to amendment filed Aug 15, 2005. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Response to Amendment

The substitute specification filed March 2, 2005 has been entered. The drawings filed March 2, 2005 are accepted by the examiner. The claims filed June 28, 2005 has been entered. However, the claims still do not comply with the Office Rules. Any addition to the claims must be underlined, and any deletions to the claims must be strikeout by drawing a line across the deleted material. This has been mentioned to Applicant before. However, in order to accelerate prosecution of the application, the examiner would enter the claims as explained below. Original claims 1-13 are still active in the case (they must be cancelled in next response); claims 14-17 have been cancelled per Applicant amendment; claims 1-13 listed in the amendment are renumbered as per Rule 1.176.

Information Disclosure Statement

Receipt is acknowledged of Information Disclosure Statement filed March 2, 2005, which has been reviewed by the Examiner.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 1-13 have been renumbered 18-30.

Claim Rejections - 35 USC § 112

Claims 1-13 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Please refer to former Office Action.

Claims 18-30 are also indefinite since it is not clear if Applicant intends to recite the tree as a positive element of the invention, or not. The preamble of claim 30 appears to recite the tree as a subcombination but in line 3 the tree is then positively recited (see clause "firmly attached". Applicant must amend claim 18 to either clearly recite the tree as a positive element, or include functional language indicating the tree is not a positive element of the combination.

Claim Rejections - 35 USC § 103

Claims 1-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Welzen (Pat No 6,010,108) in view of St. George Syms (Pat No 4,261,138). Please refer to former Office Action.

Claims 18, 20, 21, 28, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welzen in view of Sofy et al. (Pat No 6,357,173)

The patent to Welzen shows a pot (18), cover (96), bowl (16) base (12).

The patent to Sofy et al. shows a base with lips. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the base shown by Welzen with lips as shown by Sofy et al. for a variant of reasons, for example aesthetics.

As to claim 19, Welzen shows the use of guide holes for receiving fasteners (38); the number of guide holes used is considered a matter of engineering expediency.

As to claim 21, Welzen shows a hole (32) allowing the pass of water. The number of holes used is seen as a matter of expediency.

Allowable Subject Matter

Claims 22-27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RAMON O. RAMIREZ** whose telephone number is (571) 272-6821. The examiner can normally be reached on **MONDAY-FRIDAY, IST FRIDAY OFF**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor ROBERT OLSZEWSKI, can be reached on (571) 272-6788.

The fax phone number for the organization where this application or proceeding is assigned is 571 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ROR
September 7, 2005


RAMON O. RAMIREZ
Primary Examiner
Art Unit 3632